

## REMARKS

Claims 1-18 were pending in this application at the time of the Office Action of January 30, 2006. Claims 1-18 were rejected on various grounds discussed below.

Reconsideration of the claims is requested.

### Interview Summary

On March 20, 2006, the Applicant's attorney, Albert Metrailer, called Examiner Boyd to discuss the pending office action. The discussion related primarily to claim 1 and the Repp '397 reference and what submissions were needed to overcome the reference.

The issue of what it means to remove a quilt cover from a fusible batt was discussed. In particular, the Applicant's position is that to be removed implicitly means that the parts are separated without damage. If damage occurs, it means that part of the batt remains adhered to the cover, and therefore the cover has not actually been removed from the batt. The Examiner indicated that she saw the distinction.

The Examiner's requirement for evidence of how the June Tailor product described in the '397 reference works was discussed. In particular, the §132 declaration that is attached is an appropriate way to provide the required evidence.

The attorney also noted that current June Tailor products indicate that they now contain thermoplastic adhesive. The attorney offered to provide copies of the new packaging as evidence that the prior products, in particular those described in the '397 patent, do not include thermoplastic adhesive.

The attorney also noted that June Tailor has filed three continuations of the '397 patent, one which has issued as U.S. Patent No. 6,838,398, one that was abandoned

10/196,643 and one that is currently pending, U.S. Application Serial No. 10/799,298. The prosecution of these indicates that the adhesive has been distinguished from thermoplastic adhesives, primarily on the function of being removable from a finished quilt by being water soluble.

No agreement was reached on allowability. However, the Examiner suggested that after this response is filed, the attorney should call and request another interview with the Examiner and her supervisor.

### **Claim rejections – 35 USC § 102**

Claims 1-4, 6-7, 9-16 and 18 were rejected as being anticipated by Repp et al. U.S. Patent No. 6,261,397, as evidenced by the packaging for “Quilter’s Fusible Batting” by June Tailor, which references U.S. Patent No. 6,261,397 and the product contained therein. The Applicant respectfully traverses these rejections.

The Applicant submits that teachings found on the packaging and the product contained therein are not proper prior art. There is no evidence that these materials were published or made available to the public before the filing date of the present application. Only the teachings found in the U.S. Patent No. 6,261,397 are proper prior art. For example, the patent does not teach or suggest that the cover is repositionable after the adhesive is activated. It does not teach removing a cover from the batt either at room temperature or by reheating.

The fact that the packaging of the June Tailor products references U.S. Patent No. 6,261,397 is evidence that the packaging must have been printed after the patent issued.

The patent issued on July 17, 2001. The present application has a priority date of June 4, 2001, i.e., before the reference patent issued and the number was known.

As to claim 1, the Examiner asserts that Repp teaches a quilt batting having an outer coating of inactive adhesive (column 2, lines 50-65). The Examiner also asserts that the coating is activated by heat (column 3, lines 4-20), equated to Applicant's "elevated temperature." It is the position of the Examiner that although it may cause damage to the quilt batt, the quilt cover can be removed from the fusible quilt batt at room temperature.

The Applicant disagrees with the Examiner's position. Claim 1 requires that the cover be removed from the batt, not that it be removed from part of the batt. The obvious damage that the Examiner is considering is separation of the batt into at least two layers. One part would remain attached to the cover. In that case, the batt is actually no longer "the batt"; it has been split into several partial batts. The batt would not actually be separated from the cover, because part of it would still be attached to the cover. It also would not be possible to reattach the cover to the batt, because the adhesive would be located between the cover and the part of the batt still attached to the cover by the adhesive. The present invention provided a batt that is capable of being reattached after removal, even when the cover is removed at room temperature.

While claim 1 does not include the reattachment step of claim 2, the Applicant submits that claim 1 must be read in the context of the entire disclosure that includes the teaching of the reattachment step. In particular, the reattachment step supports the position that removal of a cover from the batt means that the batt has not been damaged. After it is removed, it is still a complete batt with an adhesive on its surface.

As to claim 9, the Examiner asserts that Repp teaches: a quilt batting having an outer coating of inactive adhesive (column 2, lines 50-65); the coating is activated by heat (column 3, lines 4-20), equated to Applicant's "elevated temperature"; and the elevated temperature is achieved by an iron (claim 3) and therefore the temperature is above room temperature.

The Examiner, with reference to the commercial product sold by June Tailor, notes that that product is packaged as a rolled batting within a plastic bag and that it can be rolled and unrolled without damage to the batt. The Examiner equates the level of tackiness that the batting has at room temperature or the manufacturing temperature to Applicant's "first level of tackiness."

Claim 9 requires that the adhesive be a thermoplastic. The applicant submits that since the adhesives of Repp may be removed from the finished quilt by washing in water, it cannot be a thermoplastic, which is insoluble in water. It is a key feature of the teachings of the Repp reference that the inactive adhesive replaces the prior art temporary attachment means. The water soluble adhesive is removable just like the prior art attachment means, but by simply rinsing or washing the finished quilt. It avoids the time consuming manual steps required in the prior art methods. The file wrappers of the Repp reference and its continuations make it clear that Repp is limited to removable and water soluble adhesives.

As to the use of a commercially available sample of the June Tailor product as a reference, the Applicant submits that this is not a valid reference, unless there is proof that the product was sold prior to the priority date of the present application.

As to claim 13, it is the position of the Examiner that although it may cause damage to the quilt batt, the quilt cover can be removed from the fusible quilt batt at room temperature. As discussed above, the Applicant submits that if damage occurs, then the cover has not been removed from the batt.

### **Claim rejections – 35 USC § 103**

In the § 103 rejections, the Examiner asserts that Repp fails to teach specific details of the inactive adhesive and teaches only functional capabilities.

At column 3, lines 36-48, Repp teaches that the preferred adhesive is a commercially available product known as “Sol-U-Web.” This product can be found and ordered today on the internet. The functional capability is that the adhesive is heat activated and water soluble. Repp states that the adhesive may be removed by hand or machine washing. This is the only adhesive taught by Repp. While it states that other adhesives may be used “based on the teachings of the invention,” the applicant submits that the teachings require that the adhesive may be removed by washing, thus excluding thermoplastic adhesives.

### **Examiner’s Response to Arguments**

In par. 6 of the office action, the Examiner again takes the position that the adhesive bond between the quilt and the batting could be pulled apart, but would possibly result in damage to the batt. The Examiner asserts that the Applicant does not require in the claim that the batt would not be damaged upon removal at room temperature.

As discussed above, if the batt is damaged, it necessarily means that the batt has been separated into at least two layers and the "batt" no longer exists. As suggested in the Examiner's statement, the question is whether the "adhesive bond between the quilt (cover) and batting could be pulled apart." The adhesive is between the batt and the cover. If in fact that bond is pulled apart, then there would be no damage to the batt. To separate the two parts means that the parts still exist as separate parts. The Applicant submits that it is inherent in the claim language that the batt can be separated from the cover without damage. It is inherent that after separating, the batt is intact and has an adhesive layer on its surface so that it can be reattached to the cover.

In par. 7 of the office action, the Examiner has required that the Applicant submit evidence to support the assertion that the adhesive in the June Tailor product does not permit easy peeling. A declaration of Linda M. Pumphrey is submitted with this response. Ms. Pumphrey observed the market introduction of the June Tailor product in January 2000 and tested the product in March 2000, the same month in which the Repp application was filed. As stated in the declaration, the batt could not be removed from the cover at room temperature without separating the batt into layers, which makes reattachment impossible, since the adhesive is trapped between part of the batt and the cover. The declaration also reports retesting of a portion of the same product sample from 2000 with the same results.

The declaration also reports that a current sample of a June Tailor product was purchased and tested. That new sample and three samples of current June Tailor products obtained by Applicant's attorney in March 2006 all now indicate that the products

include a thermoplastic adhesive, like the Applicant's invention. Attached to this response are copies of the three packages obtained by Applicant's attorney. As stated in the declaration, the new products do permit a cover to be removed from the batt substantially without damage even at room temperature. The Applicant submits that this is evidence to support the assertion that the product described in the Repp patent does not perform this function. June Tailor had to change its product by substituting thermoplastic adhesive to have the same function as covered by the pending claims. The earliest package revision date found on the packaging of the current products obtained by Applicant's attorney is 2/05, *i.e.*, February 2005, which is after publication of the present application.

In view of the above remarks, the Applicant submits that independent claims 1 and 9 are clearly patentable over the Repp reference. The remaining claims all depend from claims 1 or 9 and should be allowable.

## SUMMARY

Applicant respectfully submits that the present application as amended is in condition for allowance. If the Examiner has any questions or comments or otherwise feels it would be helpful in expediting the application, he is encouraged to telephone the undersigned at (972) 731-2288.

The Commissioner is hereby authorized to charge any fees that may be due in connection with this communication, or credit any overpayment thereof, to Deposit Account No. 50-1515, Conley Rose, P.C.

Respectfully submitted,

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